

# EMPLOYER RESPONSIBILITIES

HOUSTON ONE STOP BUSINESS CENTER, P.O. Box 1562, Houston, Tx. 77251 - PH: 713-247-2982

THE FOLLOWING AGENCIES REGULATE BUSINESSES WITH EMPLOYEES. TO DETERMINE WHETHER OR NOT YOU HAVE EMPLOYEES, OR FOR INFORMATION ON CONTRACT EMPLOYEES AND EMPLOYEE LEASING, CALL THE **TEXAS WORKFORCE COMMISSION**. FOR SPECIFIC LAWS OR STATUTES, CONTACT THE INDIVIDUAL AGENCY.

SEE ALSO: [www.tded.state.tx.us/guide/STEP4.html](http://www.tded.state.tx.us/guide/STEP4.html)

## ◆ **TEXAS WORKFORCE COMMISSION** [www.twc.state.tx.us](http://www.twc.state.tx.us) **281-933-3858 (1-800-832-9394)**

12455 Beechnut, Houston. The TWC Tax Office handles Unemployment Insurance Taxes and the State Employment I.D. Number. CALL THE TWC IF YOU HAVE QUESTIONS ABOUT BEING AN EMPLOYER VERSUS A CONTRACTOR. The Payday Law Unit is at 800-832-9243. TWC also administers the Texas Unemployment Compensation Act (TUCA), the Texas Child Labor Law, the Texas Payday Law, and the Texas Minimum Wage Act. **UNEMPLOYMENT INSURANCE HOTLINE: 800-558-8321.**

## ◆ **TEXAS NEW HIRE PROGRAM** [www.newhire.org/tx/](http://www.newhire.org/tx/) **1-888-839-4473**

P.O.Box 149224, Austin, 78714. **Effective October 1, 1998**, in accordance with the federal Personal Responsibility and Work Opportunity Reconciliation Act (**PRWORA**) of 1996, all Texas employers will be required to report certain information on newly hired and rehired employees to a State Directory of New Hires. Under federal welfare reform legislation enacted last year, New Hire Reporting is a program for the reporting by employers of information on newly hired employees to the Employer New Hire Reporting Operations Center within 20 days after the date a new employee is hired. The employee information is entered into a statewide registry and then transmitted to the National Directory of New Hires. The entries on the State and National registries are compared to databases of various state agencies, including the Child Support Program. The information contained in the directories will be used by the Child Support Program to locate parents who have not paid their child support obligations. Once these parents are located, it may be possible to establish new child support orders or modify and enforce existing orders.

## ◆ **TEXAS WORKERS' COMPENSATION COMMISSION** [twcc.state.tx.us](http://twcc.state.tx.us) **713-943-0800 (TDD: 7-1-1)**

1445 N. Loop West, #600. Employers with 15 or more employees, and maintain Workers' Compensation insurance coverage shall adopt a policy designed to eliminate drugs, alcohol, inhalants, and illegal drugs from the workplace. TWCC has a **HEALTH & SAFETY HOTLINE (1-800-452-9595)** for reporting unsafe working conditions, and a **GENERAL INFORMATION HOTLINE (1-800-252-7031)**. For outside City of Houston, Call 800-372-7713 for handling Workers' Compensation claims.

## ◆ **EQUAL EMPLOYMENT OPPORTUNITY COMMISSION** [www.eeoc.gov](http://www.eeoc.gov) **713-209-3320 (TDD: 713-209-3439)**

1919 Smith St., 7th Floor. Title VII of the Civil Rights Acts of 1964 and 1991, prohibits discrimination in hiring, promotion, discharge, pay and fringe benefits, on the basis of race color, religion, sex, or national origin. The **AMERICANS WITH DISABILITIES ACT (ADA)**, as pertaining to employment, is enforced by the EEOC. The U.S. Justice Dept. enforces the ADA as it relates to public accommodations and communications. Employers must display the "EEOC Poster" conspicuously in the workplace. The EEOC also enforces the Equal Pay Act of 1963, the Age Discrimination in Employment Act of 1967, and the Rehabilitation Act of 1973.

♦ **IMMIGRATION AND NATURALIZATION SERVICE** [www.ins.usdoj.gov](http://www.ins.usdoj.gov)  
**800-375-5283 & 281-847-7900 (TDD: 800-767-1TDD)**

509 North Belt. The Immigration Reform and Control Act of 1986 states that employers should hire only U.S. citizens and aliens authorized to work in the U.S. You must verify employee eligibility for anyone hired after Nov. 6, 1986, and must complete and retain "Form I-9". Call for Handbook M-274. Forms are available by calling 1-800-870-3676.

♦ **OCCUPATIONAL SAFETY & HEALTH ADMINISTRATION** [www.osha.gov](http://www.osha.gov)  
**281-286-0583 or 281-591-2438**

17625 El Camino Real, Suite 400. Certain businesses must maintain records on occupational illnesses and injuries and are subject to OSHA inspections. Most businesses with employees must display the "OSHA Poster".

♦ **U.S. DEPT. OF LABOR, Wage & Hour Division** [www.dol.gov](http://www.dol.gov)  
**713-339-5500 (New)**

9990 Richmond Ave., #202. Inquire as to Minimum Wage Requirements, overtime, and child labor recording under the Fair Labor Standards Act. DOL also has Fair Labor Standards Act and Polygraph Protection Act posters for applicable businesses. Current wage scales are: Federal Minimum Wage- \$5.15/hour; Youth Subminimum Wage- \$4.25/hour; Texas State Minimum Wage- \$3.35/hour (applies to employees not covered by the Federal Fair Labor Standards Act- enforced by the Texas Workforce Commission, Labor Law Dept.). The U.S. DOL also enforces the Family and Medical Leave (FMLA) Act of 1993. The FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to "eligible" employees for certain family and medical reasons.

♦ **PENSION & WELFARE BENEFITS ADMIN.** [www.dol.gov/dol/pwba](http://www.dol.gov/dol/pwba)  
**214-767-6831**

The PWBA enforces the Employment Retirement Income Security Act of 1974 (ERISA), which requires administrators of private pension and welfare plans to provide plan participants with easily understandable summaries of plans; to file those summaries with the National PWBA, Summary Plan Description Office at 202-219-8769. PBWA also administers COBRA (Consolidated Omnibus Budget Reconciliation Act) where terminated employees or those who lose health coverage because of reduced work hours may be able to buy group coverage for limited periods of time.

♦ **U.S. SOCIAL SECURITY ADMINISTRATION** [www.ssa.gov](http://www.ssa.gov)  
**1-800-772-1213**

Each employee must have a Social Security Number to work in the US. Employers must have proof of employees' SSN's to properly report earnings to the Social Security Administration, and to the IRS for income tax purposes.

## **FYI!!!**

The **WorkSource** is a comprehensive human resources provider serving the 13-county Houston-Galveston Gulf Coast region. We help employers solve workforce-related business problems and individuals make career transition.

- \* Job listings posted on public boards and on electronic job banks
- \* Referrals to job openings that match skills and experience
- \* Resume assistance through workshops and specialized software
- \* Copiers, fax machines, telephones and computers available for use in job search efforts
- \* Internet access to post resumes, conduct research, and look at job openings
- \* Labor market information, including local employment trends
- \* A resource library for job searching, career choices, education and training

If you are a job seeker and are interested in obtaining employment services, call 1-888-469-JOBS (5627).

# TEXAS EMPLOYERS POSTING REQUIREMENTS

HOUSTON ONE STOP BUSINESS CENTER, P.O. Box 1562, Houston, Tx. 77251 - Ph. 713-247-2982

*Employers Are Required by Law to Display the Following Posters And/or Documents Prominently in Their Place of Business. **Businesses Are Responsible for Displaying All Posters Required by Law.** Call the Agencies Listed below for Posting Procedures and Availability.*

## EMPLOYMENT LAW GUIDE

[www.dol.gov/asp/programs/guide.htm](http://www.dol.gov/asp/programs/guide.htm)

## US DEPT OF LABOR POSTER PAGE

[www.dol.gov/osbp/sbrefa/poster/main.htm](http://www.dol.gov/osbp/sbrefa/poster/main.htm)

## TEXAS WORKFORCE COMM. LABOR LAW PAGE

[www.twc.state.tx.us/customers/bemp/bempsub2.html](http://www.twc.state.tx.us/customers/bemp/bempsub2.html)

► **TEXAS WORKFORCE COMMISSION, Payday Law Unit 800--832-9243 (TDD: 800-735-2989)**

[www.twc.state.tx.us](http://www.twc.state.tx.us)

State law requires all employers to post this notice. It advises employees of their rights under the Texas Unemployment Compensation Act (512-463-2747). Employers are also required by the Texas Payday Law to post notice of their paydays.

► **TEXAS WORKERS' COMPENSATION COMM., 713-880-0206 or 713-943-0800**

[www.twcc.state.tx.us](http://www.twcc.state.tx.us)

Under the Texas Workers' Comp. Act, employers are required to post notice #6 (in English & Spanish) as to whether or not the employer has workers' compensation coverage, and how employees can report workplace safety violations. Notices illustrating the company's drug policy - and disclosing the purchase or termination of insurance coverage - must be provided to employees.

► **U.S. EQUAL EMPLOYMENT OPPORTUNITY COMM. 713-209-3320 or 214-655-3355**

[www.eeoc.gov/publications.html](http://www.eeoc.gov/publications.html)

A poster entitled, "Equal Employment Opportunity is the Law" meets the requirements of the Age Discrimination in Employment Act of 1967, Title VII of the Civil Rights Act of 1964, and the Civil Rights Act of 1991. The EEOC enforces the Americans with Disabilities Act (ADA) and the Equal Pay Act.

► **FAIR LABOR STANDARDS ACT - US DOL, 713-339-5500 or 214-767-6897 (Dallas)**

[www.dol.gov/osbp/sbrefa/poster/main.htm](http://www.dol.gov/osbp/sbrefa/poster/main.htm)

Call to find out if your business is required to display the Fair Labor Standards Act and the Polygraph Protection Act posters. U.S. DOL also enforces the "FAMILY AND MEDICAL LEAVE ACT OF 1993". Employers must post a FMLA poster if they have > 50 employees within a 75-mile radius.

► **U.S. OCCUPATIONAL SAFETY & HEALTH ADMIN. - OSHA, 281-286-0583 or 281-591-2438**

[www.osha.gov/pls/publications/pubindex.list#posters1](http://www.osha.gov/pls/publications/pubindex.list#posters1)

The "OSHA Poster" explains the Occupational Safety and Health Act of 1970. Dallas regional office- 214-767-4731.

► **TEXAS TIER TWO REPORT 1-800-452-2791**

[www.tdh.state.tx.us/beh/hazcom/](http://www.tdh.state.tx.us/beh/hazcom/)

The Texas Tier Two Report is an annual hazardous chemical inventory which provides detailed information on chemicals which meet or exceed specified reporting thresholds at any time during a calendar year. There are two types of thresholds that determine whether a hazardous chemical will be included on the Texas Tier Two Report: There are very low thresholds for any of the listed Extremely Hazardous Substances (500 pounds or the Threshold Planning Quantity in pounds for the specific listed chemical, whichever amount is less). For all other "generally hazardous chemicals" [products which require a Material Safety Data Sheet (MSDS) under the federal Occupational Safety and Health Administration's (OSHA's) Hazard Communication Standard], the threshold for reporting is 10,000 pounds.

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# CONTRACT LABOR

HOUSTON ONE STOP BUSINESS CENTER, P.O. Box 1562, Houston, Tx. 77251-1562, Ph: 713-247-2982

"Contract labor" may be the most widely used misnomer in business today. The issue is really whether a given worker is an employee or an independent contractor. In basic terms, an employee is someone over whose work an employer exercises direction or control and for whom there is extensive wage reporting and tax responsibility. An independent contractor is self-employed, bears responsibility for his own taxes and expenses, and is not subject to an employer's direction and control. The distinction depends upon much more than what the parties call themselves.

The Texas Unemployment Compensation Act does not directly define "independent contractor". Instead, it sets forth a broadly inclusive test, known as the "direction or control" or "common law" test, for who is an employee: "employment" means a service, including service in interstate commerce, performed by an individual for wages or under an express or implied contract of hire, unless it is shown to the satisfaction of the Commission that the individual's performance of the service has been and will continue to be free from control or direction under the contract and in fact". By implication, an "independent contractor" would be a person whose services do not meet the above test.

It is important to note that it does not matter that one or both parties may call their arrangement "contract labor". The above definition makes clear that the important consideration is the underlying nature of the work relationship. The law creates a presumption of employment and places the burden for proving otherwise on the employer. It sets forth the primary factor in an independent contractor relationship, namely, the absence of direction and control over the work.

## SPECIFIC CRITERIA FOR DEFINING CONTRACT LABOR

Text taken from: [www.twc.state.tx.us/news/efte/specific\\_criteria.html](http://www.twc.state.tx.us/news/efte/specific_criteria.html)

Employers often confront these issues over short-term or as needed workers performing services for them. Any employer using what it considers to be "contract labor" should ask itself some questions up front:

**Is the service provided by the individuals in question essential to, and an integral part of, the service the employer provides to the public?**

The less able an employer is to offer its primary service without the help of the people whose status is at issue, the more likely it is that they will be considered employees. Consider this: if certain services are so essential to a business that it will stand or fall based upon how well those services are performed, the business will naturally want to exercise enough direction and control over the services to ensure they are good. That amount of control can make a company an employer of such workers.

**What opportunity for profit or risk of loss is there for the worker? What kind of investment, other than his or her time, does the worker have in the enterprise?**

An employee is paid for her time. She would not be expected to provide her own workplace, materials, tools, and supplies, or otherwise to invest her own money in the business. An employee who makes a costly mistake can be fired, but cannot legally be forced to work without pay. An independent contractor, on the other hand, is an independent businessperson with expenses of his or her own. He will be expected to provide or purchase everything he needs to do the job. If he fails to satisfy the customer, he would be required to redo the work for no additional compensation, or else face the risk of non-payment by the customer. These things create the opportunity for profit or loss.

**What is the compensation arrangement? Is the compensation negotiated, or is it imposed by the employer?**

A true independent contractor's main concern is her own bottom line, not that of the employer. Since she is responsible for

her own overhead, including the hiring of any helpers she may need, there is always an element of negotiation in any bona fide contract for services. Usually, but not always, an independent contractor is paid by the job. It is up to him to figure out how much he needs to finish the job at a profit. If he miscalculates, the loss is his.

**Does the individual provide his services to the public at large? Does he advertise his services in newspapers, the Yellow Pages, or specialized journals?**

If a person holds herself out to the public as self-employed and available for work for any customer with whom she can negotiate an acceptable price, she is likely to be held an independent contractor. The more the worker advertises, the more it is apparent that she is in business for herself, since an independent business stands or falls based upon its business development efforts.

**Is there a non-competition agreement?**

Generally, non-competition agreements and independent contractors do not go hand-in-hand. Such a provision in a contract is strongly indicative of an employment relationship, chiefly because it proves that the services in question are directly related to the primary service provided by the employer. If those services were not related, there would be no "competition" and thus nothing against which to guard. The power to keep a person from pursuing his or her own business interests and to force a person to sign such an agreement is typical of the power wielded by employers over employees.

**Does the worker provide his services on a continuous basis?**

The more long-term, continuous, and exclusive the relationship is, the more likely it is to be employment. Independent contractors, on the other hand, generally perform their work one job at a time and are paid on the same basis.

**Is the worker required to provide services under the employer's name? Does she represent herself to the public as being an employee of the employer? On whose behalf are the services performed?**

If the general public would perceive the person to be a representative of the employer because of business cards, uniforms, or other advertising, this would be more indicative of an employee than an independent contractor. An employee performs services on behalf of the employer for customers of the employer. An independent contractor performs services on her own behalf for her own customers.

**Does the employer retain the right to dictate how the work should be done? Is the worker required to work a certain schedule, to notify the employer if he will not come to work, or to get the employer's approval for any helpers who are hired?**

When an employer contracts for outside services, it is normally interested only in the end result, not in the details of how the contractor performs the work. The employer should have no interest in how the independent contractor allocates either his time or that of his helpers. By the same token, the employer would have no interest in the contractor's right to hire his own helpers, beyond the right to contractually specify that anyone providing services on a project must be properly licensed under whatever laws apply to the work.